



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-2557/P2

TJD:med:imp

In: 11/21/11

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

2011 BILL

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x
1 AN ACT *to amend* 46.22 (1) (c) 8. (intro.), 46.275 (5) (b) 4., 46.278 (1), 46.278 (1m)
2 (am), 46.278 (2) (a), 46.278 (4) (a), 46.278 (5) (a), 46.278 (6) (e) 1. a., 46.278 (6)
3 (e) 1. b., 46.278 (6) (e) 1. c., 46.284 (2) (c), 49.43 (7) (b) 1., 49.45 (6m) (ar) 1. c.,
4 49.45 (6m) (bg), 49.45 (30m) (a) 2., 50.04 (2r), 50.04 (4) (dm), 50.14 (1) (a), 50.14
5 (1) (b), 50.14 (2) (bm), 50.14 (2m), 51.01 (5) (a), 51.06 (8) (a) 1., 51.06 (8) (b)
6 (intro.), 51.06 (8) (b) 4., 51.06 (8) (b) 7., 51.42 (6m) (intro.), 51.437 (4g) (c), 51.62
7 (4), 54.01 (8), 55.01 (2), 58.05 (title), 58.05 (1), 146.40 (1) (bt), 146.40 (2) (intro.),
8 146.40 (2) (c) (intro.), 146.40 (2) (c) 2., 146.40 (2) (d), 146.40 (2) (e), 146.40 (2)
9 (g), 146.40 (2m), subchapter VIII (title) of chapter 150 [precedes 150.96], 150.96
10 (2), 150.96 (4), 150.963 (title), 150.963 (2) (a), 150.963 (2) (b), 150.965, 150.97,
11 150.975, 150.983, 155.20 (2) (a) 2., 155.30 (3) and 632.88 (1) (a); and *to create*

1 51.01 (10d), 54.01 (16m) and 55.01 (3t) of the statutes; **relating to:** defining
2 intellectual disability and changing terminology.

Analysis by the Legislative Reference Bureau

This bill substitutes the phrase “intellectual disability” for “mental retardation” and “mentally retarded” in the statutes. Additionally, the bill defines an intellectual disability as a condition in which an individual has significantly subaverage intellectual functioning and deficits or impairments in adaptive function in certain areas before that individual has attained the age of 18.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 **SECTION 1.** 46.22 (1) (c) 8. (intro.) of the statutes is amended to read:

4 46.22 (1) (c) 8. (intro.) To administer child welfare services including services
5 to juveniles who are delinquent and to children who ~~are mentally retarded,~~ have an
6 intellectual disability or are dependent, neglected or nonmarital, and to other
7 children who are in need of such services. In administering child welfare services the
8 county department of social services shall be governed by the following:

9 **SECTION 2.** 46.275 (5) (b) 4. of the statutes is amended to read:

10 46.275 (5) (b) 4. Provide services, except respite care that is approved by the
11 department, within a skilled nursing facility, intermediate care facility or
12 intermediate care facility for persons with ~~mental retardation~~ an intellectual
13 disability, as defined in s. 46.278 (1m) (am), including a state center for the
14 developmentally disabled.

15 **SECTION 3.** 46.278 (1) of the statutes is amended to read:

16 46.278 (1) LEGISLATIVE INTENT. The intent of the programs under this section
17 is to provide home or community-based care to serve in a noninstitutional
18 community setting a person who meets eligibility requirements under 42 USC 1396n

(c) and who is diagnosed as developmentally disabled under the definition specified in s. 51.01 (5) and relocated from an institution other than a state center for the developmentally disabled or who meets the intermediate care facility for persons with ~~mental retardation~~ an intellectual disability or brain injury rehabilitation facility level of care requirements for medical assistance reimbursement in an intermediate care facility for persons with ~~mental retardation~~ an intellectual disability or a brain injury rehabilitation facility and is ineligible for services under s. 46.275 or 46.277. The intent of the program is also that counties use all existing services for providing care under this section, including those services currently provided by counties.

SECTION 4. 46.278 (1m) (am) of the statutes is amended to read:

46.278 (1m) (am) "Intermediate care facility for persons with ~~mental retardation~~ an intellectual disability" has the meaning given for "intermediate care facility for the mentally retarded" under 42 USC 1396d (d).

SECTION 5. 46.278 (2) (a) of the statutes is amended to read:

46.278 (2) (a) The department may request one or more waivers from the secretary of the federal department of health and human services, under 42 USC 1396n (c), authorizing the department to serve medical assistance recipients, who meet the level of care requirements for medical assistance reimbursement in an intermediate care facility for persons with ~~mental retardation~~ an intellectual disability or in a brain injury rehabilitation facility, in their communities by providing home or community-based services as part of medical assistance. If the department requests a waiver, it shall include all assurances required under 42 USC 1396n (c) (2) in its request.

SECTION 6. 46.278 (4) (a) of the statutes is amended to read:

1 46.278 (4) (a) Sections 46.27 (3) (b) and 46.275 (3) (a) and (c) to (e) apply to
2 county participation in a program, except that services provided in the program shall
3 substitute for care provided a person in an intermediate care facility for persons with
4 ~~mental retardation~~ an intellectual disability or in a brain injury rehabilitation
5 facility who meets the intermediate care facility for persons with ~~mental retardation~~
6 an intellectual disability or brain injury rehabilitation facility level of care
7 requirements for medical assistance reimbursement to that facility rather than for
8 care provided at a state center for the developmentally disabled.

9 **SECTION 7.** 46.278 (5) (a) of the statutes is amended to read:

10 46.278 (5) (a) Any medical assistance recipient who meets the level of care
11 requirements for medical assistance reimbursement in an intermediate care facility
12 for persons with ~~mental retardation~~ an intellectual disability or in a brain injury
13 rehabilitation facility and is ineligible for service under s. 46.275 or 46.277 is eligible
14 to participate in a program, except that persons eligible for the brain injury waiver
15 program must meet the definition of brain injury under s. 51.01 (2g), and except that
16 the number of participants may not exceed the number approved under the waiver
17 received under sub. (3). Such a recipient may apply, or any person may apply on
18 behalf of such a recipient, for participation in a program. Section 46.275 (4) (b)
19 applies to participation in a program.

20 **SECTION 8.** 46.278 (6) (e) 1. a. of the statutes is amended to read:

21 46.278 (6) (e) 1. a. An intermediate care facility for persons with ~~mental~~
22 ~~retardation~~ an intellectual disability that closes under s. 50.03 (14).

23 **SECTION 9.** 46.278 (6) (e) 1. b. of the statutes is amended to read:

1 46.278 (6) (e) 1. b. An intermediate care facility for persons with ~~mental~~
2 ~~retardation~~ an intellectual disability or a distinct part thereof that has a plan of
3 closure approved by the department and that intends to close within 12 months.

4 **SECTION 10.** 46.278 (6) (e) 1. c. of the statutes is amended to read:

5 46.278 (6) (e) 1. c. An intermediate care facility for persons with ~~mental~~
6 ~~retardation~~ an intellectual disability that has a plan of closure or significant
7 reduction in capacity approved by the department and that intends to close or
8 significantly reduce its capacity within 60 months.

9 **SECTION 11.** 46.284 (2) (c) of the statutes is amended to read:

10 46.284 (2) (c) The department shall require, as a term of any contract with a
11 care management organization under this section, that the care management
12 organization contract for the provision of services that are covered under the family
13 care benefit with any community-based residential facility under s. 50.01 (1g),
14 residential care apartment complex under s. 50.01 (1d), nursing home under s. 50.01
15 (3), intermediate care facility for ~~the mentally retarded~~ persons with an intellectual
16 disability under s. 50.14 (1) (b), community rehabilitation program, home health
17 agency under s. 50.49 (1) (a), provider of day services, or provider of personal care,
18 as defined in s. 50.01 (4o), that agrees to accept the reimbursement rate that the care
19 management organization pays under contract to similar providers for the same
20 service and that satisfies any applicable quality of care, utilization, or other criteria
21 that the care management organization requires of other providers with which it
22 contracts to provide the same service.

23 **SECTION 12.** 49.43 (7) (b) 1. of the statutes is amended to read:

24 49.43 (7) (b) 1. Licensed or approved under state law for ~~the mentally retarded~~
25 individuals with an intellectual disability or persons with related conditions, the

1 primary purpose of which is to provide health or rehabilitative services for ~~mentally~~
2 ~~retarded~~ individuals with an intellectual disability according to rules promulgated
3 by the department; and

4 **SECTION 13.** 49.45 (6m) (ar) 1. c. of the statutes is amended to read:

5 49.45 **(6m)** (ar) 1. c. If a facility has an approved program for provision of service
6 to ~~mentally retarded~~ residents who have an intellectual disability, residents
7 dependent upon ventilators, or residents requiring supplemental skilled care due to
8 complex medical conditions, a supplement to the direct care component of the facility
9 rate under subd. 1. b. may be made to that facility according to a method developed
10 by the department.

11 **SECTION 14.** 49.45 (6m) (bg) of the statutes is amended to read:

12 49.45 **(6m)** (bg) The department shall determine payment levels for the
13 provision of skilled, intermediate, limited, personal or residential care or care for ~~the~~
14 ~~mentally retarded~~ individuals with an intellectual disability in the state centers for
15 the developmentally disabled and in a Wisconsin veterans home operated by the
16 department of veterans affairs under s. 45.50 separately from the payment
17 principles, applicable costs and methods established under this subsection.

18 **SECTION 15.** 49.45 (30m) (a) 2. of the statutes is amended to read:

19 49.45 **(30m)** (a) 2. Services in an intermediate care facility for persons with
20 ~~mental retardation~~ an intellectual disability, as defined in s. 46.278 (1m) (am), other
21 than a state center for the developmentally disabled.

22 **SECTION 16.** 50.04 (2r) of the statutes is amended to read:

23 50.04 **(2r)** ADMISSIONS REQUIRING APPROVAL. Except in an emergency, a nursing
24 home that is not certified as a provider of medical assistance or that is an
25 intermediate care facility for persons with ~~mental retardation~~ an intellectual

1 ~~disability~~, as defined in s. 46.278 (1m) (am), or an institution for mental diseases, as
2 defined under 42 CFR 435.1009, may not admit as a resident an individual who has
3 a developmental disability, as defined in s. 51.01 (5), or who is both under age 65 and
4 has mental illness, as defined in s. 51.01 (13), unless the county department under
5 s. 46.23, 51.42 or 51.437 of the individual's county of residence has recommended the
6 admission.

7 **SECTION 17.** 50.04 (4) (dm) of the statutes is amended to read:

8 50.04 (4) (dm) *Inspection fee.* If the department takes enforcement action
9 against a nursing home, including an intermediate care facility for ~~the mentally~~
10 ~~retarded persons with an intellectual disability~~, as defined in 42 USC 1396d (d) ~~s.~~
11 50.14 (1) (b), for a violation of this subchapter or rules promulgated under it or for
12 a violation of a requirement under 42 USC 1396r, and the department subsequently
13 conducts an on-site inspection of the nursing home to review the nursing home's
14 action to correct the violation, the department may, unless the nursing home is
15 operated by the state, impose a \$200 inspection fee on the nursing home.

16 **SECTION 18.** 50.14 (1) (a) of the statutes is amended to read:

17 50.14 (1) (a) Notwithstanding s. 50.01 (1m), "facility" means a nursing home
18 or an intermediate care facility for persons with ~~mental retardation~~ an intellectual
19 disability that is not located outside the state.

20 **SECTION 19.** 50.14 (1) (b) of the statutes is amended to read:

21 50.14 (1) (b) "Intermediate care facility for persons with ~~mental retardation~~ an
22 intellectual disability" has the meaning given for "intermediate care facility for the
23 mentally retarded" under 42 USC 1396d (d).

24 **SECTION 20.** 50.14 (2) (bm) of the statutes is amended to read:

1 50.14 (2) (bm) For intermediate care facilities for persons with ~~mental~~
2 ~~retardation~~ an intellectual disability, an amount calculated by multiplying the
3 projected annual gross revenues of all intermediate care facilities for persons with
4 ~~mental retardation~~ an intellectual disability in this state by 0.055, dividing the
5 product by the number of licensed beds of intermediate care facilities for persons
6 with ~~mental retardation~~ an intellectual disability in this state and dividing the
7 quotient by 12.

8 **SECTION 21.** 50.14 (2m) of the statutes is amended to read:

9 50.14 (2m) Prior to each state fiscal year, the department shall calculate the
10 amount of the assessment under sub. (2) (bm) that shall apply during the fiscal year.
11 The department may reduce the assessment amount during a state fiscal year to
12 avoid collecting for the fiscal year an amount in bed assessment receipts under sub.
13 (2) (bm) that exceeds 5.5 percent of the aggregate gross revenues for intermediate
14 care facilities for ~~the mentally retarded~~ persons with an intellectual disability for the
15 fiscal year.

16 **SECTION 22.** 51.01 (5) (a) of the statutes is amended to read:

17 51.01 (5) (a) "Developmental disability" means a disability attributable to
18 brain injury, cerebral palsy, epilepsy, autism, Prader-Willi syndrome, ~~mental~~
19 ~~retardation~~ intellectual disability, or another neurological condition closely related
20 to ~~mental retardation~~ an intellectual disability or requiring treatment similar to that
21 required for individuals with ~~mental retardation~~ an intellectual disability, which has
22 continued or can be expected to continue indefinitely and constitutes a substantial
23 handicap to the afflicted individual. "Developmental disability" does not include
24 dementia that is primarily caused by degenerative brain disorder.

25 **SECTION 23.** 51.01 (10d) of the statutes is created to read:

1 51.01 (10d) "Intellectual disability" means a condition of an individual that
2 meets all of the following criteria:

3 (a) If the individual is not an infant, the individual has significantly
4 subaverage intellectual functioning as demonstrated by an intelligence quotient of
5 approximately 70 or below on an individually administered test of intelligence
6 quotient.

7 (b) If the individual is an infant, the infant has significantly subaverage
8 intellectual functioning under the clinical judgment of a health care provider.

9 (c) The individual has deficits or impairments in adaptive function in at least
10 2 of the following areas:

- 11 1. Communication.
- 12 2. Self-care.
- 13 3. Home living.
- 14 4. Social or interpersonal skills.
- 15 5. Use of community resources.
- 16 6. Self-direction.
- 17 7. Functional academic skills.
- 18 8. Work.
- 19 9. Leisure.
- 20 10. Health.
- 21 11. Safety.

22 (d) The individual displays the subaverage intellectual functioning described
23 in par. (a) or (b) and the deficits or impairments described in par. (c) before the
24 individual has attained the age of 18.

25 **SECTION 24.** 51.06 (8) (a) 1. of the statutes is amended to read:

1 51.06 (8) (a) 1. "Intermediate care facility for persons with ~~mental retardation~~
2 an intellectual disability" has the meaning given for "intermediate care facility for
3 the mentally retarded" under 42 USC 1396d (d).

4 **SECTION 25.** 51.06 (8) (b) (intro.) of the statutes is amended to read:

5 51.06 (8) (b) (intro.) Annually by October 1, the department shall submit to the
6 joint committee on finance and to the appropriate standing committees of the
7 legislature under s. 13.172 (3) a report that includes information collected from the
8 previous fiscal year on the relocation or diversion of individuals who are Medical
9 Assistance eligibles or recipients from nursing homes, intermediate care facilities for
10 persons with ~~mental retardation~~ an intellectual disability, and centers for the
11 developmentally disabled. The report shall include all of the following information:

12 **SECTION 26.** 51.06 (8) (b) 4. of the statutes is amended to read:

13 51.06 (8) (b) 4. An accounting of the costs and savings under the Medical
14 Assistance program of relocations and diversions and the resulting reduction in
15 capacity for services of nursing homes, intermediate care facilities for persons with
16 ~~mental retardation~~ an intellectual disability, and centers for the developmentally
17 disabled. The accounting shall include the per individual savings as well as the
18 collective savings of relocations and diversions.

19 **SECTION 27.** 51.06 (8) (b) 7. of the statutes is amended to read:

20 51.06 (8) (b) 7. Staff turnover rates for nursing homes, intermediate care
21 facilities for persons with ~~mental retardation~~ an intellectual disability, and centers
22 for the developmentally disabled in communities in which an individual relocated or
23 diverted from a nursing home, intermediate care facility for persons with ~~mental~~
24 ~~retardation~~ an intellectual disability, or center for the developmentally disabled
25 currently resides.

1 **SECTION 28.** 51.42 (6m) (intro.) of the statutes is amended to read:

2 **51.42 (6m)** COUNTY COMMUNITY PROGRAMS DIRECTOR IN CERTAIN COUNTIES WITH A
3 COUNTY EXECUTIVE OR COUNTY ADMINISTRATOR. (intro.) In any county with a county
4 executive or county administrator in which the county board of supervisors has
5 established a single-county department of community programs, the county
6 executive or county administrator shall appoint and supervise the county
7 community programs director. In any county with a population of 500,000 or more,
8 the county executive or county administrator shall appoint the director of the county
9 department of human services under s. 46.21 as the county community programs
10 director. The appointment of a county community programs director under this
11 subsection shall be on the basis of recognized and demonstrated interest in and
12 knowledge of the problems of mental health, ~~mental retardation~~ intellectual
13 disability, alcoholism and drug addiction, with due regard to training, experience,
14 executive and administrative ability, and general qualification and fitness for the
15 performance of the duties of the director. The appointment of a county community
16 programs director under this subsection is subject to confirmation by the county
17 board of supervisors unless the county board of supervisors, by ordinance, elects to
18 waive confirmation or unless the appointment is made under a civil service system
19 competitive examination procedure established under s. 59.52 (8) or ch. 63. The
20 county community programs director, subject only to the supervision of the county
21 executive or county administrator, shall:

22 **SECTION 29.** 51.437 (4g) (c) of the statutes is amended to read:

23 **51.437 (4g) (c)** In a county with a population of 500,000 or more, the county
24 board of supervisors shall integrate day care programs for ~~mentally retarded~~ persons

1 with an intellectual disability and those programs for persons with other
2 developmental disabilities into the county developmental disabilities program.

3 **SECTION 30.** 51.62 (4) of the statutes is amended to read:

4 51.62 (4) DEPARTMENTAL DUTIES. The department shall provide the protection
5 and advocacy agency with copies of annual surveys and plans of correction for
6 intermediate care facilities for persons with ~~mental retardation~~ an intellectual
7 disability on or before the first day of the 2nd month commencing after completion
8 of the survey or plan.

9 **SECTION 31.** 54.01 (8) of the statutes is amended to read:

10 54.01 (8) "Developmental disability" means a disability attributable to ~~mental~~
11 ~~retardation~~ intellectual disability, cerebral palsy, epilepsy, autism, or another
12 neurological condition closely related to ~~mental retardation~~ an intellectual disability
13 or requiring treatment similar to that required for individuals with ~~mental~~
14 ~~retardation~~ an intellectual disability, which has continued or can be expected to
15 continue indefinitely, substantially impairs an individual from adequately providing
16 for his or her own care or custody, and constitutes a substantial handicap to the
17 afflicted individual. The term does not include dementia that is primarily caused by
18 degenerative brain disorder.

19 **SECTION 32.** 54.01 (16m) of the statutes is created to read:

20 54.01 (16m) "Intellectual disability" means a condition of an individual that
21 meets all of the following criteria:

22 (a) If the individual is not an infant, the individual has significantly
23 subaverage intellectual functioning as demonstrated by an intelligence quotient of
24 approximately 70 or below on an individually administered test of intelligence
25 quotient.

(b) If the individual is an infant, the infant has significantly subaverage intellectual functioning under the clinical judgment of a health care provider.

(c) The individual has deficits or impairments in adaptive function in at least 2 of the following areas:

1. Communication.
2. Self-care.
3. Home living.
4. Social or interpersonal skills.
5. Use of community resources.
6. Self-direction.
7. Functional academic skills.
8. Work.
9. Leisure.
10. Health.
11. Safety.

(d) The individual displays the subaverage intellectual functioning described in par. (a) or (b) and the deficits or impairments described in par. (c) before the individual has attained the age of 18.

SECTION 33. 55.01 (2) of the statutes is amended to read:

55.01 (2) "Developmental disability" means a disability attributable to ~~mental retardation~~ intellectual disability, cerebral palsy, epilepsy, autism or another neurological condition closely related to ~~mental retardation~~ an intellectual disability or requiring treatment similar to that required for individuals with ~~mental retardation~~ an intellectual disability, which has continued or can be expected to continue indefinitely, substantially impairs an individual from adequately providing

1 for his or her own care or custody, and constitutes a substantial handicap to the
2 afflicted individual. The term does not include dementia that is primarily caused by
3 degenerative brain disorder.

4 **SECTION 34.** 55.01 (3t) of the statutes is created to read:

5 55.01 (3t) "Intellectual disability" means a condition of an individual that
6 meets all of the following criteria:

7 (a) If the individual is not an infant, the individual has significantly
8 subaverage intellectual functioning as demonstrated by an intelligence quotient of
9 approximately 70 or below on an individually administered test of intelligence
10 quotient.

11 (b) If the individual is an infant, the infant has significantly subaverage
12 intellectual functioning under the clinical judgment of a health care provider.

13 (c) The individual has deficits or impairments in adaptive function in at least
14 2 of the following areas:

- 15 1. Communication.
- 16 2. Self-care.
- 17 3. Home living.
- 18 4. Social or interpersonal skills.
- 19 5. Use of community resources.
- 20 6. Self-direction.
- 21 7. Functional academic skills.
- 22 8. Work.
- 23 9. Leisure.
- 24 10. Health.
- 25 11. Safety.

1 (d) The individual displays the subaverage intellectual functioning described
2 in par. (a) or (b) and the deficits or impairments described in par. (c) before the
3 individual has attained the age of 18.

4 **SECTION 35.** 58.05 (title) of the statutes is amended to read:

5 **58.05 (title) Private institutions for persons who are mentally ill or**
6 **retarded have an intellectual disability.**

7 **SECTION 36.** 58.05 (1) of the statutes is amended to read:

8 58.05 (1) The articles of organization of any corporation organized under the
9 laws of this state for the establishment and maintenance of any hospital or other
10 institution for the care, treatment or relief of persons who are mentally ill or ~~retarded~~
11 have an intellectual disability may contain provisions authorizing it to receive
12 general, special, permanent or temporary endowments and to secure the repayment
13 of the same in accordance with the terms and conditions upon which they may be
14 made by a mortgage upon its real or personal property, or both, or otherwise, in the
15 manner in such articles provided.

16 **SECTION 37.** 146.40 (1) (bt) of the statutes is amended to read:

17 146.40 (1) (bt) "Intermediate care facility for persons with ~~mental retardation~~
18 an intellectual disability" has the meaning given for "intermediate care facility for
19 the mentally retarded" under 42 USC 1396d (d).

20 **SECTION 38.** 146.40 (2) (intro.) of the statutes is amended to read:

21 146.40 (2) (intro.) A hospital, nursing home, intermediate care facility for
22 persons with ~~mental retardation~~ an intellectual disability, home health agency, or
23 hospice may not employ or contract for the services of an individual as a nurse aide,
24 regardless of the title under which the individual is employed or contracted for,
25 unless one of the following is true:

1 **SECTION 39.** 146.40 (2) (c) (intro.) of the statutes is amended to read:

2 146.40 (2) (c) (intro.) For hospitals, nursing homes, home health agencies or
3 hospices, whether or not certified providers of medical assistance, and intermediate
4 care facilities persons with ~~mental retardation~~ an intellectual disability that are
5 certified providers of medical assistance, the individual is enrolled in an
6 instructional program for nurse aides that is approved under sub. (3) and is
7 employed or under contract as a nurse's assistant, home health aide or hospice aide
8 fewer than 120 calendar days by the hospital, nursing home, home health agency,
9 hospice or intermediate care facility for ~~the mentally retarded~~ persons with an
10 intellectual disability. All of the following applies to an individual specified under
11 this paragraph:

12 **SECTION 40.** 146.40 (2) (c) 2. of the statutes is amended to read:

13 146.40 (2) (c) 2. The hospital, nursing home, home health agency, hospice, or
14 intermediate care facility for persons with ~~mental retardation~~ an intellectual
15 disability may not include the individual in meeting or complying with a
16 requirement for nursing care staff and functions, including a minimum nursing staff
17 requirement.

18 **SECTION 41.** 146.40 (2) (d) of the statutes is amended to read:

19 146.40 (2) (d) For hospitals, nursing homes, home health agencies, or hospices,
20 whether or not certified providers of medical assistance, and intermediate care
21 facilities for persons with ~~mental retardation~~ an intellectual disability that are
22 certified providers of medical assistance, the individual has successfully completed
23 an instructional program and a competency evaluation program for nurse aides that
24 is certified in another state that meets criteria for acceptance in this state as
25 specified by the department by rule.

1 **SECTION 42.** 146.40 (2) (e) of the statutes is amended to read:

2 146.40 (2) (e) For hospitals, home health agencies, or hospices, whether or not
3 certified providers of medical assistance, nursing homes that are not certified
4 providers of medical assistance and intermediate care facilities for persons with
5 ~~mental retardation~~ an intellectual disability that are certified providers of medical
6 assistance, the individual is a student nurse who has successfully completed a basic
7 nursing course from a school that is on the accredited list of schools specified under
8 s. 441.01 (4) or who successfully completes a competency evaluation program for
9 nurse aides that is approved by the department under sub. (3m).

10 **SECTION 43.** 146.40 (2) (g) of the statutes is amended to read:

11 146.40 (2) (g) For hospitals, nursing homes, home health agencies, or hospices,
12 whether or not certified providers of medical assistance, and intermediate care
13 facilities for persons with ~~mental retardation~~ an intellectual disability that are
14 certified providers of medical assistance, the individual, if he or she has performed
15 no nursing-related service for monetary compensation for 24 consecutive months
16 after having satisfied the requirement under par. (a), again successfully completes
17 a competency evaluation program for nurse aides that is approved by the department
18 under sub. (3m).

19 **SECTION 44.** 146.40 (2m) of the statutes is amended to read:

20 146.40 (2m) A nursing home or intermediate care facility for persons with
21 ~~mental retardation~~ an intellectual disability, whether or not the nursing home or
22 intermediate care facility is a certified provider of medical assistance, may not
23 employ or contract for the services of an individual as a feeding assistant, regardless
24 of the title under which the individual is employed or contracted for, unless the

1 individual has successfully completed a state-approved training and testing
2 program, as specified by the department by rule.

3 **SECTION 45.** Subchapter VIII (title) of chapter 150 [precedes 150.96] of the
4 statutes is amended to read:

5 **CHAPTER 150**

6 **SUBCHAPTER VIII**

7 **MENTAL RETARDATION FACILITIES FOR THE INTELLECTUALLY**

8 **DISABLED AND COMMUNITY MENTAL HEALTH**

9 **CENTERS CONSTRUCTION**

10 **SECTION 46.** 150.96 (2) of the statutes is amended to read:

11 150.96 (2) "Facility for ~~the mentally retarded~~ individuals with an intellectual
12 disability" means a facility specially designed for the diagnosis, treatment,
13 education, training or custodial care of ~~the mentally retarded~~ individuals with an
14 intellectual disability; including facilities for training specialists and sheltered
15 workshops for ~~the mentally retarded~~ individuals with an intellectual disability, but
16 only if such workshops are part of facilities which provide or will provide
17 comprehensive services for ~~the mentally retarded~~ individuals with an intellectual
18 disability.

19 **SECTION 47.** 150.96 (4) of the statutes is amended to read:

20 150.96 (4) "Nonprofit facility for ~~the mentally retarded~~ individuals with an
21 intellectual disability", and "nonprofit community mental health center" mean,
22 respectively, a facility for ~~the mentally retarded~~ individuals with an intellectual
23 disability, and a community mental health center which is owned and operated by
24 one or more nonprofit corporations or associations no part of the net earnings of

1 which inures, or may lawfully inure, to the benefit of any private shareholder or
2 individual.

3 **SECTION 48.** 150.963 (title) of the statutes is amended to read:

4 **150.963 (title) Construction of ~~mental retardation~~ facilities for the**
5 **intellectually disabled and community mental health centers.**

6 **SECTION 49.** 150.963 (2) (a) of the statutes is amended to read:

7 150.963 (2) (a) Making inventories of existing facilities, surveying the need for
8 construction for facilities for ~~the mentally retarded~~ individuals with an intellectual
9 disability and community mental health centers, and developing programs of
10 construction.

11 **SECTION 50.** 150.963 (2) (b) of the statutes is amended to read:

12 150.963 (2) (b) Developing and administering a state plan for the construction
13 of public and other nonprofit facilities for ~~the mentally retarded~~ individuals with an
14 intellectual disability, and a state plan for the construction of public and other
15 nonprofit community mental health centers.

16 **SECTION 51.** 150.965 of the statutes is amended to read:

17 **150.965 Construction programs.** The department is directed to develop
18 construction programs for facilities for ~~the mentally retarded~~ individuals with an
19 intellectual disability and community mental health centers for the mentally ill,
20 which shall be based respectively on statewide inventories of existing facilities for
21 ~~the mentally retarded~~ individuals with an intellectual disability and the mentally
22 ill and surveys of need, and which shall provide in accordance with regulations
23 prescribed under the federal act, for facilities which will provide adequate services
24 for ~~the mentally retarded~~ individuals with an intellectual disability and adequate

1 community mental health services for the people residing in this state and for
2 furnishing needed services to persons unable to pay therefor.

3 **SECTION 52.** 150.97 of the statutes is amended to read:

4 **150.97 Standards for maintenance and operation.** The department shall
5 by regulation prescribe, and shall be authorized to enforce, standards for the
6 maintenance and operation of facilities for ~~the mentally retarded~~ individuals with
7 an intellectual disability, and community mental health centers which receive
8 federal aid for construction under the state plans.

9 **SECTION 53.** 150.975 of the statutes is amended to read:

10 **150.975 Applications.** Applications for ~~mental retardation~~ facility for
11 individuals with an intellectual disability or community mental health center
12 construction projects for which federal funds are requested shall be submitted to the
13 department by the state, a political subdivision thereof or by a public or other
14 nonprofit agency. Each application for a construction project shall conform to federal
15 and state requirements.

16 **SECTION 54.** 150.983 of the statutes is amended to read:

17 **150.983 ~~Mental retardation facilities~~ Facilities for individuals with an**
18 **intellectual disability and community mental health centers construction**
19 **funds.** The department may receive federal funds in behalf of, and transmit them
20 to, applicants. In the general fund there is hereby established, separate and apart
21 from all public moneys of this state, ~~a mental retardation~~ an intellectual disability
22 facilities construction fund and a community mental health centers construction
23 fund. Money received from the federal government for a construction project under
24 this subchapter approved by the secretary shall be deposited to the credit of the

1 appropriate fund and shall be used solely for payments to applicants for work
2 performed, or purchases made, in carrying out the approved project.

3 **SECTION 55.** 155.20 (2) (a) 2. of the statutes is amended to read:

4 155.20 (2) (a) 2. An intermediate care facility for persons with ~~mental~~
5 ~~retardation~~ an intellectual disability, as defined in s. 46.278 (1m) (am).

6 **SECTION 56.** 155.30 (3) of the statutes is amended to read:

7 155.30 (3) The department shall prepare and provide copies of a power of
8 attorney for health care instrument and accompanying information for distribution
9 in quantities to health care professionals, hospitals, nursing homes, multipurpose
10 senior centers, county clerks, and local bar associations and individually to private
11 persons. The department shall include, in information accompanying the copy of the
12 instrument, at least the statutory definitions of terms used in the instrument,
13 statutory restrictions on who may be witnesses to a valid instrument, a statement
14 explaining that valid witnesses acting in good faith are statutorily immune from civil
15 or criminal liability and a statement explaining that an instrument may, but need
16 not, be filed with the register in probate of the principal's county of residence. The
17 department may charge a reasonable fee for the cost of preparation and distribution.
18 The power of attorney for health care instrument distributed by the department
19 shall include the notice specified in sub. (1) and shall be in the following form:

20 **POWER OF ATTORNEY FOR HEALTH CARE**

21 Document made this.... day of.... (month),.... (year).

22 **CREATION OF POWER OF ATTORNEY**

23 **FOR HEALTH CARE**

24 I,.... (print name, address and date of birth), being of sound mind, intend by this
25 document to create a power of attorney for health care. My executing this power of

1 attorney for health care is voluntary. Despite the creation of this power of attorney
2 for health care, I expect to be fully informed about and allowed to participate in any
3 health care decision for me, to the extent that I am able. For the purposes of this
4 document, "health care decision" means an informed decision to accept, maintain,
5 discontinue or refuse any care, treatment, service or procedure to maintain, diagnose
6 or treat my physical or mental condition.

7 In addition, I may, by this document, specify my wishes with respect to making
8 an anatomical gift upon my death.

9 DESIGNATION OF HEALTH CARE AGENT

10 If I am no longer able to make health care decisions for myself, due to my
11 incapacity, I hereby designate.... (print name, address and telephone number) to be
12 my health care agent for the purpose of making health care decisions on my behalf.
13 If he or she is ever unable or unwilling to do so, I hereby designate.... (print name,
14 address and telephone number) to be my alternate health care agent for the purpose
15 of making health care decisions on my behalf. Neither my health care agent nor my
16 alternate health care agent whom I have designated is my health care provider, an
17 employee of my health care provider, an employee of a health care facility in which
18 I am a patient or a spouse of any of those persons, unless he or she is also my relative.
19 For purposes of this document, "incapacity" exists if 2 physicians or a physician and
20 a psychologist who have personally examined me sign a statement that specifically
21 expresses their opinion that I have a condition that means that I am unable to receive
22 and evaluate information effectively or to communicate decisions to such an extent
23 that I lack the capacity to manage my health care decisions. A copy of that statement
24 must be attached to this document.

25 GENERAL STATEMENT OF AUTHORITY GRANTED

1 Unless I have specified otherwise in this document, if I ever have incapacity I
2 instruct my health care provider to obtain the health care decision of my health care
3 agent, if I need treatment, for all of my health care and treatment. I have discussed
4 my desires thoroughly with my health care agent and believe that he or she
5 understands my philosophy regarding the health care decisions I would make if I
6 were able. I desire that my wishes be carried out through the authority given to my
7 health care agent under this document.

8 If I am unable, due to my incapacity, to make a health care decision, my health
9 care agent is instructed to make the health care decision for me, but my health care
10 agent should try to discuss with me any specific proposed health care if I am able to
11 communicate in any manner, including by blinking my eyes. If this communication
12 cannot be made, my health care agent shall base his or her decision on any health
13 care choices that I have expressed prior to the time of the decision. If I have not
14 expressed a health care choice about the health care in question and communication
15 cannot be made, my health care agent shall base his or her health care decision on
16 what he or she believes to be in my best interest.

17 LIMITATIONS ON MENTAL HEALTH TREATMENT

18 My health care agent may not admit or commit me on an inpatient basis to an
19 institution for mental diseases, an intermediate care facility for persons with mental
20 ~~retardation~~ an intellectual disability, a state treatment facility or a treatment
21 facility. My health care agent may not consent to experimental mental health
22 research or psychosurgery, electroconvulsive treatment or drastic mental health
23 treatment procedures for me.

24 ADMISSION TO NURSING HOMES OR 25 COMMUNITY-BASED RESIDENTIAL FACILITIES

1 My health care agent may admit me to a nursing home or community-based
2 residential facility for short-term stays for recuperative care or respite care.

3 If I have checked "Yes" to the following, my health care agent may admit me for
4 a purpose other than recuperative care or respite care, but if I have checked "No" to
5 the following, my health care agent may not so admit me:

6 1. A nursing home — Yes.... No....

7 2. A community-based residential facility — Yes.... No....

8 If I have not checked either "Yes" or "No" immediately above, my health care
9 agent may admit me only for short-term stays for recuperative care or respite care.

10 PROVISION OF A FEEDING TUBE

11 If I have checked "Yes" to the following, my health care agent may have a
12 feeding tube withheld or withdrawn from me, unless my physician has advised that,
13 in his or her professional judgment, this will cause me pain or will reduce my comfort.
14 If I have checked "No" to the following, my health care agent may not have a feeding
15 tube withheld or withdrawn from me.

16 My health care agent may not have orally ingested nutrition or hydration
17 withheld or withdrawn from me unless provision of the nutrition or hydration is
18 medically contraindicated.

19 Withhold or withdraw a feeding tube — Yes.... No....

20 If I have not checked either "Yes" or "No" immediately above, my health care
21 agent may not have a feeding tube withdrawn from me.

22 HEALTH CARE DECISIONS FOR 23 PREGNANT WOMEN

24 If I have checked "Yes" to the following, my health care agent may make health
25 care decisions for me even if my agent knows I am pregnant. If I have checked "No"

1 to the following, my health care agent may not make health care decisions for me if
2 my health care agent knows I am pregnant.

3 Health care decision if I am pregnant — Yes.... No....

4 If I have not checked either “Yes” or “No” immediately above, my health care
5 agent may not make health care decisions for me if my health care agent knows I am
6 pregnant.

7 STATEMENT OF DESIRES,

8 SPECIAL PROVISIONS OR LIMITATIONS

9 In exercising authority under this document, my health care agent shall act
10 consistently with my following stated desires, if any, and is subject to any special
11 provisions or limitations that I specify. The following are specific desires, provisions
12 or limitations that I wish to state (add more items if needed):

13 1) -

14 2) -

15 3) -

16 INSPECTION AND DISCLOSURE OF
17 INFORMATION RELATING TO MY PHYSICAL
18 OR MENTAL HEALTH

19 Subject to any limitations in this document, my health care agent has the
20 authority to do all of the following:

21 (a) Request, review and receive any information, oral or written, regarding my
22 physical or mental health, including medical and hospital records.

23 (b) Execute on my behalf any documents that may be required in order to obtain
24 this information.

25 (c) Consent to the disclosure of this information.

(The principal and the witnesses all must sign the document at the same time.)

SIGNATURE OF PRINCIPAL

(person creating the power of attorney for health care)

Signature.... Date....

(The signing of this document by the principal revokes all previous powers of attorney for health care documents.)

STATEMENT OF WITNESSES

I know the principal personally and I believe him or her to be of sound mind and at least 18 years of age. I believe that his or her execution of this power of attorney for health care is voluntary. I am at least 18 years of age, am not related to the principal by blood, marriage, or adoption, am not the domestic partner under ch. 770 of the principal, and am not directly financially responsible for the principal's health care. I am not a health care provider who is serving the principal at this time, an employee of the health care provider, other than a chaplain or a social worker, or an employee, other than a chaplain or a social worker, of an inpatient health care facility in which the declarant is a patient. I am not the principal's health care agent. To the best of my knowledge, I am not entitled to and do not have a claim on the principal's estate.

Witness No. 1:

(print) Name.... Date....

Address....

Signature....

Witness No. 2:

(print) Name.... Date....

Address....

1 Signature....

2 STATEMENT OF HEALTH CARE AGENT AND

3 ALTERNATE HEALTH CARE AGENT

4 I understand that.... (name of principal) has designated me to be his or her
5 health care agent or alternate health care agent if he or she is ever found to have
6 incapacity and unable to make health care decisions himself or herself. (name of
7 principal) has discussed his or her desires regarding health care decisions with me.

8 Agent's signature....

9 Address....

10 Alternate's signature....

11 Address....

12 Failure to execute a power of attorney for health care document under chapter
13 155 of the Wisconsin Statutes creates no presumption about the intent of any
14 individual with regard to his or her health care decisions.

15 This power of attorney for health care is executed as provided in chapter 155
16 of the Wisconsin Statutes.

17 ANATOMICAL GIFTS (optional)

18 Upon my death:

19 I wish to donate only the following organs or parts: (specify the organs or
20 parts).

21 I wish to donate any needed organ or part.

22 I wish to donate my body for anatomical study if needed.

23 I refuse to make an anatomical gift. (If this revokes a prior commitment that
24 I have made to make an anatomical gift to a designated donee, I will attempt to notify
25 the donee to which or to whom I agreed to donate.)

1 Failing to check any of the lines immediately above creates no presumption
2 about my desire to make or refuse to make an anatomical gift.

3 Signature.... Date....

4 **SECTION 57.** 632.88 (1) (a) of the statutes is amended to read:

5 632.88 (1) (a) Incapable of self-sustaining employment because of ~~mental~~
6 ~~retardation~~ intellectual disability or physical handicap; and

7 (END)

Basford, Sarah

From: Scholz, AJ
Sent: Tuesday, November 22, 2011 8:50 AM
To: LRB.Legal
Subject: Draft Review: LRB 11-2557/1 Topic: Changing the term mental retardation to intellectual disability

Please Jacket LRB 11-2557/1 for the ASSEMBLY.

Dodge, Tamara

From: Dodge, Tamara
Sent: Monday, December 12, 2011 11:32 AM
To: Scholz, AJ
Subject: RE: Authorization to Review Bill Draft LRB 2557/1

AJ,

If there is no definition in the statutes, either the agency defines it by rule, or in this case, it sounds like it would be up to the medical professionals to determine. Though, the department usually has the last say on who is eligible for certain programs so the bottom line on the definition would probably be determined by DHS even if they don't have a definition in writing.

Thanks,
Tami

Tamara J. Dodge

Attorney
Wisconsin Legislative Reference Bureau
P.O. Box 2037
Madison, WI 53701-2037
(608) 267 - 7380
tamara.dodge@legis.wisconsin.gov

From: Scholz, AJ
Sent: Monday, December 12, 2011 11:28 AM
To: Dodge, Tamara
Subject: RE: Authorization to Review Bill Draft LRB 2557/1

Tamara,

I will send the Jacket back right away. We can certainly go ahead and remove the definition.

If we don't define something in statute than it will be up to the agency to define the term is that correct? Just want to clarify my understanding.

The Jacket should be on its way over shortly.

Thank you for all your work on this.

AJ Scholz

Office of Representative Erik Severson
608-267-2365
312 North, State Capitol

From: Dodge, Tamara
Sent: Monday, December 12, 2011 11:07 AM
To: Scholz, AJ
Subject: RE: Authorization to Review Bill Draft LRB 2557/1

12/12/2011

AJ,

I spoke to Kevin Bailey at DHS. He expressed his concern about the definition of intellectual disability. I disagree with their conclusions about the definition, but I admit that the definition isn't a perfect solution. I understand their concerns and told him I would remove the definitions if your office agreed. Please confirm that it is okay with Representative Severson to remove the definitions of intellectual disability.

I think this draft has been jacketed and to redraft the draft and remove the definitions, I will need the jacket back. You can just have it delivered to the Legislative Reference Bureau and our front desk will take care of it.

If you have any questions, please feel free to contact me.

Thanks,

Tami

Tamara J. Dodge

Attorney

Wisconsin Legislative Reference Bureau

P.O. Box 2037

Madison, WI 53701-2037

(608) 267 - 7380

tamara.dodge@legis.wisconsin.gov

From: Scholz, AJ

Sent: Friday, December 02, 2011 11:48 AM

To: Dodge, Tamara

Cc: Rowe, Sandra M - DHS; Gebhart, Neil R - DHS; Bailey, Kevin D - DHS; O'Brien, Kyle T - DHS

Subject: RE: Authorization to Review Bill Draft LRB 2557/1

Hello Tamara,

After speaking with the Department of Health Services they had a few concerns they would like to try and address with LRB 2557. I would appreciate it you could speak to the following people regarding their concerns so that this legislation satisfies our intent.

Sandy Rowe – DHS

Neil Gebhart – DHS

Kevin Bailey – DHS

Kyle O'Brien – DHS

Thank you very much

AJ Scholz

Office of Representative Erik Severson

608-267-2365

312 North, State Capitol

From: O'Brien, Kyle T - DHS [mailto:Kyle.O'Brien@dhs.wisconsin.gov]

Sent: Friday, December 02, 2011 11:43 AM

To: Scholz, AJ

Cc: Rowe, Sandra M - DHS; Gebhart, Neil R - DHS; Bailey, Kevin D - DHS

12/12/2011

Subject: Authorization to Review Bill Draft LRB 2557/1

AJ,

If you would like us to work with the drafting attorney at LRB on your proposal (2557/1), please authorize the following individuals to speak with the drafter.

Sandy Rowe – DHS
Neil Gebhart – DHS
Kevin Bailey – DHS
Kyle O'Brien – DHS

Thanks much,

Kyle O'Brien
Legislative Liaison
Office of the Secretary
Wisconsin Department of Health Services

Phone: (608) 266-3262

Email: Kyle.Obrien@wisconsin.gov

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Please remember that all communications conducted with state resources are subject to Wisconsin's Open Records Law.

12/12/2011



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-2557/1 2

TJD:medljf

Rmp

stays

In: 12/12/11 soon

2011 BILL

regencat

1 AN ACT *to amend* 46.22 (1) (c) 8. (intro.), 46.275 (5) (b) 4., 46.278 (1), 46.278 (1m)
2 (am), 46.278 (2) (a), 46.278 (4) (a), 46.278 (5) (a), 46.278 (6) (e) 1. a., 46.278 (6)
3 (e) 1. b., 46.278 (6) (e) 1. c., 46.284 (2) (c), 49.43 (7) (b) 1., 49.45 (6m) (ar) 1. c.,
4 49.45 (6m) (bg), 49.45 (30m) (a) 2., 50.04 (2r), 50.04 (4) (dm), 50.14 (1) (a), 50.14
5 (1) (b), 50.14 (2) (bm), 50.14 (2m), 51.01 (5) (a), 51.06 (8) (a) 1., 51.06 (8) (b)
6 (intro.), 51.06 (8) (b) 4., 51.06 (8) (b) 7., 51.42 (6m) (intro.), 51.437 (4g) (c), 51.62
7 (4), 54.01 (8), 55.01 (2), 58.05 (title), 58.05 (1), 146.40 (1) (bt), 146.40 (2) (intro.),
8 146.40 (2) (c) (intro.), 146.40 (2) (c) 2., 146.40 (2) (d), 146.40 (2) (e), 146.40 (2)
9 (g), 146.40 (2m), subchapter VIII (title) of chapter 150 [precedes 150.96], 150.96
10 (2), 150.96 (4), 150.963 (title), 150.963 (2) (a), 150.963 (2) (b), 150.965, 150.97,
11 150.975, 150.983, 155.20 (2) (a) 2., 155.30 (3) and 632.88 (1) (a); and *to create*

BILL

for those with an intellectual disability

51.01 (10d), 54.01 (16m) and 55.01 (3t) of the statutes; **relating to:** (defining
intellectual disability and changing terminology.

Analysis by the Legislative Reference Bureau

This bill substitutes the phrase "intellectual disability" for "mental retardation" and "mentally retarded" in the statutes. Additionally, the bill defines an intellectual disability as a condition in which an individual has significantly subaverage intellectual functioning and deficits or impairments in adaptive function in certain areas before that individual has attained the age of 18.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 46.22 (1) (c) 8. (intro.) of the statutes is amended to read:

46.22 (1) (c) 8. (intro.) To administer child welfare services including services to juveniles who are delinquent and to children who ~~are mentally retarded~~, have an intellectual disability or are dependent, neglected or nonmarital, and to other children who are in need of such services. In administering child welfare services the county department of social services shall be governed by the following:

SECTION 2. 46.275 (5) (b) 4. of the statutes is amended to read:

46.275 (5) (b) 4. Provide services, except respite care that is approved by the department, within a skilled nursing facility, intermediate care facility or intermediate care facility for persons with ~~mental retardation~~ an intellectual disability, as defined in s. 46.278 (1m) (am), including a state center for the developmentally disabled.

SECTION 3. 46.278 (1) of the statutes is amended to read:

46.278 (1) **LEGISLATIVE INTENT.** The intent of the programs under this section is to provide home or community-based care to serve in a noninstitutional community setting a person who meets eligibility requirements under 42 USC 1396n

BILL

1 (c) and who is diagnosed as developmentally disabled under the definition specified
2 in s. 51.01 (5) and relocated from an institution other than a state center for the
3 developmentally disabled or who meets the intermediate care facility for persons
4 with ~~mental retardation~~ an intellectual disability or brain injury rehabilitation
5 facility level of care requirements for medical assistance reimbursement in an
6 intermediate care facility for persons with ~~mental retardation~~ an intellectual
7 disability or a brain injury rehabilitation facility and is ineligible for services under
8 s. 46.275 or 46.277. The intent of the program is also that counties use all existing
9 services for providing care under this section, including those services currently
10 provided by counties.

11 **SECTION 4.** 46.278 (1m) (am) of the statutes is amended to read:

12 46.278 (1m) (am) "Intermediate care facility for persons with ~~mental~~
13 ~~retardation~~ an intellectual disability" has the meaning given for "intermediate care
14 facility for the mentally retarded" under 42 USC 1396d (d).

15 **SECTION 5.** 46.278 (2) (a) of the statutes is amended to read:

16 46.278 (2) (a) The department may request one or more waivers from the
17 secretary of the federal department of health and human services, under 42 USC
18 1396n (c), authorizing the department to serve medical assistance recipients, who
19 meet the level of care requirements for medical assistance reimbursement in an
20 intermediate care facility for persons with ~~mental retardation~~ an intellectual
21 disability or in a brain injury rehabilitation facility, in their communities by
22 providing home or community-based services as part of medical assistance. If the
23 department requests a waiver, it shall include all assurances required under 42 USC
24 1396n (c) (2) in its request.

25 **SECTION 6.** 46.278 (4) (a) of the statutes is amended to read:

BILL**SECTION 6**

1 46.278 (4) (a) Sections 46.27 (3) (b) and 46.275 (3) (a) and (c) to (e) apply to
2 county participation in a program, except that services provided in the program shall
3 substitute for care provided a person in an intermediate care facility for persons with
4 ~~mental retardation~~ an intellectual disability or in a brain injury rehabilitation
5 facility who meets the intermediate care facility for persons with ~~mental retardation~~
6 an intellectual disability or brain injury rehabilitation facility level of care
7 requirements for medical assistance reimbursement to that facility rather than for
8 care provided at a state center for the developmentally disabled.

9 **SECTION 7.** 46.278 (5) (a) of the statutes is amended to read:

10 46.278 (5) (a) Any medical assistance recipient who meets the level of care
11 requirements for medical assistance reimbursement in an intermediate care facility
12 for persons with ~~mental retardation~~ an intellectual disability or in a brain injury
13 rehabilitation facility and is ineligible for service under s. 46.275 or 46.277 is eligible
14 to participate in a program, except that persons eligible for the brain injury waiver
15 program must meet the definition of brain injury under s. 51.01 (2g), and except that
16 the number of participants may not exceed the number approved under the waiver
17 received under sub. (3). Such a recipient may apply, or any person may apply on
18 behalf of such a recipient, for participation in a program. Section 46.275 (4) (b)
19 applies to participation in a program.

20 **SECTION 8.** 46.278 (6) (e) 1. a. of the statutes is amended to read:

21 46.278 (6) (e) 1. a. An intermediate care facility for persons with ~~mental~~
22 ~~retardation~~ an intellectual disability that closes under s. 50.03 (14).

23 **SECTION 9.** 46.278 (6) (e) 1. b. of the statutes is amended to read:

BILL

1 46.278 (6) (e) 1. b. An intermediate care facility for persons with ~~mental~~
2 ~~retardation~~ an intellectual disability or a distinct part thereof that has a plan of
3 closure approved by the department and that intends to close within 12 months.

4 **SECTION 10.** 46.278 (6) (e) 1. c. of the statutes is amended to read:

5 46.278 (6) (e) 1. c. An intermediate care facility for persons with ~~mental~~
6 ~~retardation~~ an intellectual disability that has a plan of closure or significant
7 reduction in capacity approved by the department and that intends to close or
8 significantly reduce its capacity within 60 months.

9 **SECTION 11.** 46.284 (2) (c) of the statutes is amended to read:

10 46.284 (2) (c) The department shall require, as a term of any contract with a
11 care management organization under this section, that the care management
12 organization contract for the provision of services that are covered under the family
13 care benefit with any community-based residential facility under s. 50.01 (1g),
14 residential care apartment complex under s. 50.01 (1d), nursing home under s. 50.01
15 (3), intermediate care facility for ~~the mentally retarded~~ persons with an intellectual
16 disability under s. 50.14 (1) (b), community rehabilitation program, home health
17 agency under s. 50.49 (1) (a), provider of day services, or provider of personal care,
18 as defined in s. 50.01 (4o), that agrees to accept the reimbursement rate that the care
19 management organization pays under contract to similar providers for the same
20 service and that satisfies any applicable quality of care, utilization, or other criteria
21 that the care management organization requires of other providers with which it
22 contracts to provide the same service.

23 **SECTION 12.** 49.43 (7) (b) 1. of the statutes is amended to read:

24 49.43 (7) (b) 1. Licensed or approved under state law for ~~the mentally retarded~~
25 individuals with an intellectual disability or persons with related conditions, the

BILL**SECTION 12**

1 primary purpose of which is to provide health or rehabilitative services for ~~mentally~~
2 ~~retarded~~ individuals with an intellectual disability according to rules promulgated
3 by the department; and

4 **SECTION 13.** 49.45 (6m) (ar) 1. c. of the statutes is amended to read:

5 49.45 **(6m)** (ar) 1. c. If a facility has an approved program for provision of service
6 to ~~mentally-retarded~~ residents who have an intellectual disability, residents
7 dependent upon ventilators, or residents requiring supplemental skilled care due to
8 complex medical conditions, a supplement to the direct care component of the facility
9 rate under subd. 1. b. may be made to that facility according to a method developed
10 by the department.

11 **SECTION 14.** 49.45 (6m) (bg) of the statutes is amended to read:

12 49.45 **(6m)** (bg) The department shall determine payment levels for the
13 provision of skilled, intermediate, limited, personal or residential care or care for the
14 ~~mentally-retarded~~ individuals with an intellectual disability in the state centers for
15 the developmentally disabled and in a Wisconsin veterans home operated by the
16 department of veterans affairs under s. 45.50 separately from the payment
17 principles, applicable costs and methods established under this subsection.

18 **SECTION 15.** 49.45 (30m) (a) 2. of the statutes is amended to read:

19 49.45 **(30m)** (a) 2. Services in an intermediate care facility for persons with
20 ~~mental retardation~~ an intellectual disability, as defined in s. 46.278 (1m) (am), other
21 than a state center for the developmentally disabled.

22 **SECTION 16.** 50.04 (2r) of the statutes is amended to read:

23 50.04 **(2r)** ADMISSIONS REQUIRING APPROVAL. Except in an emergency, a nursing
24 home that is not certified as a provider of medical assistance or that is an
25 intermediate care facility for persons with ~~mental retardation~~ an intellectual

BILL

1 disability, as defined in s. 46.278 (1m) (am), or an institution for mental diseases, as
2 defined under 42 CFR 435.1009, may not admit as a resident an individual who has
3 a developmental disability, as defined in s. 51.01 (5), or who is both under age 65 and
4 has mental illness, as defined in s. 51.01 (13), unless the county department under
5 s. 46.23, 51.42 or 51.437 of the individual's county of residence has recommended the
6 admission.

7 **SECTION 17.** 50.04 (4) (dm) of the statutes is amended to read:

8 50.04 (4) (dm) *Inspection fee.* If the department takes enforcement action
9 against a nursing home, including an intermediate care facility for ~~the mentally~~
10 ~~retarded persons with an intellectual disability~~, as defined in 42 USC 1396d (d) s.
11 50.14 (1) (b), for a violation of this subchapter or rules promulgated under it or for
12 a violation of a requirement under 42 USC 1396r, and the department subsequently
13 conducts an on-site inspection of the nursing home to review the nursing home's
14 action to correct the violation, the department may, unless the nursing home is
15 operated by the state, impose a \$200 inspection fee on the nursing home.

16 **SECTION 18.** 50.14 (1) (a) of the statutes is amended to read:

17 50.14 (1) (a) Notwithstanding s. 50.01 (1m), "facility" means a nursing home
18 or an intermediate care facility for persons with ~~mental retardation~~ an intellectual
19 disability that is not located outside the state.

20 **SECTION 19.** 50.14 (1) (b) of the statutes is amended to read:

21 50.14 (1) (b) "Intermediate care facility for persons with ~~mental retardation~~ an
22 intellectual disability" has the meaning given for "intermediate care facility for the
23 mentally retarded" under 42 USC 1396d (d).

24 **SECTION 20.** 50.14 (2) (bm) of the statutes is amended to read:

BILL

1 50.14 (2) (bm) For intermediate care facilities for persons with mental
2 ~~retardation~~ an intellectual disability, an amount calculated by multiplying the
3 projected annual gross revenues of all intermediate care facilities for persons with
4 ~~mental retardation~~ an intellectual disability in this state by 0.055, dividing the
5 product by the number of licensed beds of intermediate care facilities for persons
6 with ~~mental retardation~~ an intellectual disability in this state and dividing the
7 quotient by 12.

8 **SECTION 21.** 50.14 (2m) of the statutes is amended to read:

9 50.14 (2m) Prior to each state fiscal year, the department shall calculate the
10 amount of the assessment under sub. (2) (bm) that shall apply during the fiscal year.
11 The department may reduce the assessment amount during a state fiscal year to
12 avoid collecting for the fiscal year an amount in bed assessment receipts under sub.
13 (2) (bm) that exceeds 5.5 percent of the aggregate gross revenues for intermediate
14 care facilities for ~~the mentally retarded~~ persons with an intellectual disability for the
15 fiscal year.

16 **SECTION 22.** 51.01 (5) (a) of the statutes is amended to read:

17 51.01 (5) (a) "Developmental disability" means a disability attributable to
18 brain injury, cerebral palsy, epilepsy, autism, Prader-Willi syndrome, ~~mental~~
19 ~~retardation~~ intellectual disability, or another neurological condition closely related
20 to ~~mental retardation~~ an intellectual disability or requiring treatment similar to that
21 required for individuals with ~~mental retardation~~ an intellectual disability, which has
22 continued or can be expected to continue indefinitely and constitutes a substantial
23 handicap to the afflicted individual. "Developmental disability" does not include
24 dementia that is primarily caused by degenerative brain disorder.

25 **SECTION 23.** 51.01 (10d) of the statutes is created to read:

BILL

1 **51.01 (10d)** "Intellectual disability" means a condition of an individual that
2 meets all of the following criteria:

3 (a) If the individual is not an infant, the individual has significantly
4 subaverage intellectual functioning as demonstrated by an intelligence quotient of
5 approximately 70 or below on an individually administered test of intelligence
6 quotient.

7 (b) If the individual is an infant, the infant has significantly subaverage
8 intellectual functioning under the clinical judgment of a health care provider.

9 (c) The individual has deficits or impairments in adaptive function in at least
10 2 of the following areas:

- 11 1. Communication.
- 12 2. Self-care.
- 13 3. Home living.
- 14 4. Social or interpersonal skills.
- 15 5. Use of community resources.
- 16 6. Self-direction.
- 17 7. Functional academic skills.
- 18 8. Work.
- 19 9. Leisure.
- 20 10. Health.
- 21 11. Safety.

22 (d) The individual displays the subaverage intellectual functioning described
23 in par. (a) or (b) and the deficits or impairments described in par. (c) before the
24 individual has attained the age of 18.

25 **SECTION 24.** 51.06 (8) (a) 1. of the statutes is amended to read:

BILL**SECTION 24**

1 51.06 (8) (a) 1. "Intermediate care facility for persons with ~~mental retardation~~
2 an intellectual disability" has the meaning given for "intermediate care facility for
3 the mentally retarded" under 42 USC 1396d (d).

4 **SECTION 25.** 51.06 (8) (b) (intro.) of the statutes is amended to read:

5 51.06 (8) (b) (intro.) Annually by October 1, the department shall submit to the
6 joint committee on finance and to the appropriate standing committees of the
7 legislature under s. 13.172 (3) a report that includes information collected from the
8 previous fiscal year on the relocation or diversion of individuals who are Medical
9 Assistance eligibles or recipients from nursing homes, intermediate care facilities for
10 persons with ~~mental retardation~~ an intellectual disability, and centers for the
11 developmentally disabled. The report shall include all of the following information:

12 **SECTION 26.** 51.06 (8) (b) 4. of the statutes is amended to read:

13 51.06 (8) (b) 4. An accounting of the costs and savings under the Medical
14 Assistance program of relocations and diversions and the resulting reduction in
15 capacity for services of nursing homes, intermediate care facilities for persons with
16 ~~mental retardation~~ an intellectual disability, and centers for the developmentally
17 disabled. The accounting shall include the per individual savings as well as the
18 collective savings of relocations and diversions.

19 **SECTION 27.** 51.06 (8) (b) 7. of the statutes is amended to read:

20 51.06 (8) (b) 7. Staff turnover rates for nursing homes, intermediate care
21 facilities for persons with ~~mental retardation~~ an intellectual disability, and centers
22 for the developmentally disabled in communities in which an individual relocated or
23 diverted from a nursing home, intermediate care facility for persons with ~~mental~~
24 ~~retardation~~ an intellectual disability, or center for the developmentally disabled
25 currently resides.

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1 **SECTION 28.** 51.42 (6m) (intro.) of the statutes is amended to read:

2 51.42 **(6m)** COUNTY COMMUNITY PROGRAMS DIRECTOR IN CERTAIN COUNTIES WITH A
3 COUNTY EXECUTIVE OR COUNTY ADMINISTRATOR. (intro.) In any county with a county
4 executive or county administrator in which the county board of supervisors has
5 established a single-county department of community programs, the county
6 executive or county administrator shall appoint and supervise the county
7 community programs director. In any county with a population of 500,000 or more,
8 the county executive or county administrator shall appoint the director of the county
9 department of human services under s. 46.21 as the county community programs
10 director. The appointment of a county community programs director under this
11 subsection shall be on the basis of recognized and demonstrated interest in and
12 knowledge of the problems of mental health, ~~mental retardation~~ intellectual
13 disability, alcoholism and drug addiction, with due regard to training, experience,
14 executive and administrative ability, and general qualification and fitness for the
15 performance of the duties of the director. The appointment of a county community
16 programs director under this subsection is subject to confirmation by the county
17 board of supervisors unless the county board of supervisors, by ordinance, elects to
18 waive confirmation or unless the appointment is made under a civil service system
19 competitive examination procedure established under s. 59.52 (8) or ch. 63. The
20 county community programs director, subject only to the supervision of the county
21 executive or county administrator, shall:

22 **SECTION 29.** 51.437 (4g) (c) of the statutes is amended to read:

23 51.437 **(4g)** (c) In a county with a population of 500,000 or more, the county
24 board of supervisors shall integrate day care programs for ~~mentally retarded~~ persons

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1 with an intellectual disability and those programs for persons with other
2 developmental disabilities into the county developmental disabilities program.

3 **SECTION 30.** 51.62 (4) of the statutes is amended to read:

4 51.62 (4) DEPARTMENTAL DUTIES. The department shall provide the protection
5 and advocacy agency with copies of annual surveys and plans of correction for
6 intermediate care facilities for persons with ~~mental retardation~~ an intellectual
7 disability on or before the first day of the 2nd month commencing after completion
8 of the survey or plan.

9 **SECTION 31.** 54.01 (8) of the statutes is amended to read:

10 54.01 (8) "Developmental disability" means a disability attributable to ~~mental~~
11 ~~retardation~~ intellectual disability, cerebral palsy, epilepsy, autism, or another
12 neurological condition closely related to ~~mental retardation~~ an intellectual disability
13 or requiring treatment similar to that required for individuals with ~~mental~~
14 ~~retardation~~ an intellectual disability, which has continued or can be expected to
15 continue indefinitely, substantially impairs an individual from adequately providing
16 for his or her own care or custody, and constitutes a substantial handicap to the
17 afflicted individual. The term does not include dementia that is primarily caused by
18 degenerative brain disorder.

19 **SECTION 32.** 54.01 (16m) of the statutes is created to read:

20 54.01 (16m) "Intellectual disability" means a condition of an individual that
21 meets all of the following criteria:

22 (a) If the individual is not an infant, the individual has significantly
23 subaverage intellectual functioning as demonstrated by an intelligence quotient of
24 approximately 70 or below on an individually administered test of intelligence
25 quotient.

BILL

(b) If the individual is an infant, the infant has significantly subaverage intellectual functioning under the clinical judgment of a health care provider.

(c) The individual has deficits or impairments in adaptive function in at least 2 of the following areas:

1. Communication.
2. Self-care.
3. Home living.
4. Social or interpersonal skills.
5. Use of community resources.
6. Self-direction.
7. Functional academic skills.
8. Work.
9. Leisure.
10. Health.
11. Safety.

(d) The individual displays the subaverage intellectual functioning described in par. (a) or (b) and the deficits or impairments described in par. (c) before the individual has attained the age of 18.

SECTION 33. 55.01 (2) of the statutes is amended to read:

55.01 (2) "Developmental disability" means a disability attributable to ~~mental retardation~~ intellectual disability, cerebral palsy, epilepsy, autism or another neurological condition closely related to ~~mental retardation~~ an intellectual disability or requiring treatment similar to that required for individuals with ~~mental retardation~~ an intellectual disability, which has continued or can be expected to continue indefinitely, substantially impairs an individual from adequately providing

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SECTION 33

1 for his or her own care or custody, and constitutes a substantial handicap to the
2 afflicted individual. The term does not include dementia that is primarily caused by
3 degenerative brain disorder.

4 **SECTION 34.** 55.01 (3t) of the statutes is created to read:

5 **55.01 (3t)** "Intellectual disability" means a condition of an individual that
6 meets all of the following criteria:

7 (a) If the individual is not an infant, the individual has significantly
8 subaverage intellectual functioning as demonstrated by an intelligence quotient of
9 approximately 70 or below on an individually administered test of intelligence
10 quotient.

11 (b) If the individual is an infant, the infant has significantly subaverage
12 intellectual functioning under the clinical judgment of a health care provider.

13 (c) The individual has deficits or impairments in adaptive function in at least
14 2 of the following areas:

- 15 1. Communication.
- 16 2. Self-care.
- 17 3. Home living.
- 18 4. Social or interpersonal skills.
- 19 5. Use of community resources.
- 20 6. Self-direction.
- 21 7. Functional academic skills.
- 22 8. Work.
- 23 9. Leisure.
- 24 10. Health.
- 25 11. Safety.

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(d) The individual displays the subaverage intellectual functioning described in par. (a) or (b) and the deficits or impairments described in par. (c) before the individual has attained the age of 18.

SECTION 35. 58.05 (title) of the statutes is amended to read:

58.05 (title) Private institutions for persons who are mentally ill or retarded have an intellectual disability.

SECTION 36. 58.05 (1) of the statutes is amended to read:

58.05 (1) The articles of organization of any corporation organized under the laws of this state for the establishment and maintenance of any hospital or other institution for the care, treatment or relief of persons who are mentally ill or ~~retarded~~ have an intellectual disability may contain provisions authorizing it to receive general, special, permanent or temporary endowments and to secure the repayment of the same in accordance with the terms and conditions upon which they may be made by a mortgage upon its real or personal property, or both, or otherwise, in the manner in such articles provided.

SECTION 37. 146.40 (1) (bt) of the statutes is amended to read:

146.40 (1) (bt) "Intermediate care facility for persons with ~~mental retardation~~ an intellectual disability" has the meaning given for "intermediate care facility for the mentally retarded" under 42 USC 1396d (d).

SECTION 38. 146.40 (2) (intro.) of the statutes is amended to read:

146.40 (2) (intro.) A hospital, nursing home, intermediate care facility for persons with ~~mental retardation~~ an intellectual disability, home health agency, or hospice may not employ or contract for the services of an individual as a nurse aide, regardless of the title under which the individual is employed or contracted for, unless one of the following is true:

BILL**SECTION 39**

SECTION 39. 146.40 (2) (c) (intro.) of the statutes is amended to read:

146.40 (2) (c) (intro.) For hospitals, nursing homes, home health agencies or hospices, whether or not certified providers of medical assistance, and intermediate care facilities persons with ~~mental retardation~~ an intellectual disability that are certified providers of medical assistance, the individual is enrolled in an instructional program for nurse aides that is approved under sub. (3) and is employed or under contract as a nurse's assistant, home health aide or hospice aide fewer than 120 calendar days by the hospital, nursing home, home health agency, hospice or intermediate care facility for ~~the mentally retarded~~ persons with an intellectual disability. All of the following applies to an individual specified under this paragraph:

SECTION 40. 146.40 (2) (c) 2. of the statutes is amended to read:

146.40 (2) (c) 2. The hospital, nursing home, home health agency, hospice, or intermediate care facility for persons with ~~mental retardation~~ an intellectual disability may not include the individual in meeting or complying with a requirement for nursing care staff and functions, including a minimum nursing staff requirement.

SECTION 41. 146.40 (2) (d) of the statutes is amended to read:

146.40 (2) (d) For hospitals, nursing homes, home health agencies, or hospices, whether or not certified providers of medical assistance, and intermediate care facilities for persons with ~~mental retardation~~ an intellectual disability that are certified providers of medical assistance, the individual has successfully completed an instructional program and a competency evaluation program for nurse aides that is certified in another state that meets criteria for acceptance in this state as specified by the department by rule.

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1 **SECTION 42.** 146.40 (2) (e) of the statutes is amended to read:

2 146.40 (2) (e) For hospitals, home health agencies, or hospices, whether or not
3 certified providers of medical assistance, nursing homes that are not certified
4 providers of medical assistance and intermediate care facilities for persons with
5 ~~mental retardation~~ an intellectual disability that are certified providers of medical
6 assistance, the individual is a student nurse who has successfully completed a basic
7 nursing course from a school that is on the accredited list of schools specified under
8 s. 441.01 (4) or who successfully completes a competency evaluation program for
9 nurse aides that is approved by the department under sub. (3m).

10 **SECTION 43.** 146.40 (2) (g) of the statutes is amended to read:

11 146.40 (2) (g) For hospitals, nursing homes, home health agencies, or hospices,
12 whether or not certified providers of medical assistance, and intermediate care
13 facilities for persons with ~~mental retardation~~ an intellectual disability that are
14 certified providers of medical assistance, the individual, if he or she has performed
15 no nursing-related service for monetary compensation for 24 consecutive months
16 after having satisfied the requirement under par. (a), again successfully completes
17 a competency evaluation program for nurse aides that is approved by the department
18 under sub. (3m).

19 **SECTION 44.** 146.40 (2m) of the statutes is amended to read:

20 146.40 (2m) A nursing home or intermediate care facility for persons with
21 ~~mental retardation~~ an intellectual disability, whether or not the nursing home or
22 intermediate care facility is a certified provider of medical assistance, may not
23 employ or contract for the services of an individual as a feeding assistant, regardless
24 of the title under which the individual is employed or contracted for, unless the

BILL**SECTION 44**

1 individual has successfully completed a state-approved training and testing
2 program, as specified by the department by rule.

3 **SECTION 45.** Subchapter VIII (title) of chapter 150 [precedes 150.96] of the
4 statutes is amended to read:

CHAPTER 150**SUBCHAPTER VIII****MENTAL RETARDATION FACILITIES FOR THE INTELLECTUALLY****DISABLED AND COMMUNITY MENTAL HEALTH****CENTERS CONSTRUCTION**

10 **SECTION 46.** 150.96 (2) of the statutes is amended to read:

11 150.96 (2) “Facility for ~~the mentally retarded~~ individuals with an intellectual
12 disability” means a facility specially designed for the diagnosis, treatment,
13 education, training or custodial care of ~~the mentally retarded~~ individuals with an
14 intellectual disability; including facilities for training specialists and sheltered
15 workshops for ~~the mentally retarded~~ individuals with an intellectual disability, but
16 only if such workshops are part of facilities which provide or will provide
17 comprehensive services for ~~the mentally retarded~~ individuals with an intellectual
18 disability.

19 **SECTION 47.** 150.96 (4) of the statutes is amended to read:

20 150.96 (4) “Nonprofit facility for ~~the mentally retarded~~ individuals with an
21 intellectual disability”, and “nonprofit community mental health center” mean,
22 respectively, a facility for ~~the mentally retarded~~ individuals with an intellectual
23 disability, and a community mental health center which is owned and operated by
24 one or more nonprofit corporations or associations no part of the net earnings of

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1 which inures, or may lawfully inure, to the benefit of any private shareholder or
2 individual.

3 **SECTION 48.** 150.963 (title) of the statutes is amended to read:

4 **150.963 (title) Construction of ~~mental retardation~~ facilities for the**
5 **intellectually disabled and community mental health centers.**

6 **SECTION 49.** 150.963 (2) (a) of the statutes is amended to read:

7 150.963 (2) (a) Making inventories of existing facilities, surveying the need for
8 construction for facilities for ~~the mentally retarded~~ individuals with an intellectual
9 disability and community mental health centers, and developing programs of
10 construction.

11 **SECTION 50.** 150.963 (2) (b) of the statutes is amended to read:

12 150.963 (2) (b) Developing and administering a state plan for the construction
13 of public and other nonprofit facilities for ~~the mentally retarded~~ individuals with an
14 intellectual disability, and a state plan for the construction of public and other
15 nonprofit community mental health centers.

16 **SECTION 51.** 150.965 of the statutes is amended to read:

17 **150.965 Construction programs.** The department is directed to develop
18 construction programs for facilities for ~~the mentally retarded~~ individuals with an
19 intellectual disability and community mental health centers for the mentally ill,
20 which shall be based respectively on statewide inventories of existing facilities for
21 ~~the mentally retarded~~ individuals with an intellectual disability and the mentally
22 ill and surveys of need, and which shall provide in accordance with regulations
23 prescribed under the federal act, for facilities which will provide adequate services
24 for ~~the mentally retarded~~ individuals with an intellectual disability and adequate

BILL**SECTION 51**

1 community mental health services for the people residing in this state and for
2 furnishing needed services to persons unable to pay therefor.

3 **SECTION 52.** 150.97 of the statutes is amended to read:

4 **150.97 Standards for maintenance and operation.** The department shall
5 by regulation prescribe, and shall be authorized to enforce, standards for the
6 maintenance and operation of facilities for ~~the mentally retarded~~ individuals with
7 an intellectual disability, and community mental health centers which receive
8 federal aid for construction under the state plans.

9 **SECTION 53.** 150.975 of the statutes is amended to read:

10 **150.975 Applications.** Applications for ~~mental retardation~~ facility for
11 individuals with an intellectual disability or community mental health center
12 construction projects for which federal funds are requested shall be submitted to the
13 department by the state, a political subdivision thereof or by a public or other
14 nonprofit agency. Each application for a construction project shall conform to federal
15 and state requirements.

16 **SECTION 54.** 150.983 of the statutes is amended to read:

17 **150.983 ~~Mental retardation facilities~~ Facilities for individuals with an**
18 **intellectual disability and community mental health centers construction**
19 **funds.** The department may receive federal funds in behalf of, and transmit them
20 to, applicants. In the general fund there is hereby established, separate and apart
21 from all public moneys of this state, ~~a mental retardation~~ an intellectual disability
22 facilities construction fund and a community mental health centers construction
23 fund. Money received from the federal government for a construction project under
24 this subchapter approved by the secretary shall be deposited to the credit of the

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appropriate fund and shall be used solely for payments to applicants for work performed, or purchases made, in carrying out the approved project.

SECTION 55. 155.20 (2) (a) 2. of the statutes is amended to read:

155.20 (2) (a) 2. An intermediate care facility for persons with ~~mental retardation~~ an intellectual disability, as defined in s. 46.278 (1m) (am).

SECTION 56. 155.30 (3) of the statutes is amended to read:

155.30 (3) The department shall prepare and provide copies of a power of attorney for health care instrument and accompanying information for distribution in quantities to health care professionals, hospitals, nursing homes, multipurpose senior centers, county clerks, and local bar associations and individually to private persons. The department shall include, in information accompanying the copy of the instrument, at least the statutory definitions of terms used in the instrument, statutory restrictions on who may be witnesses to a valid instrument, a statement explaining that valid witnesses acting in good faith are statutorily immune from civil or criminal liability and a statement explaining that an instrument may, but need not, be filed with the register in probate of the principal's county of residence. The department may charge a reasonable fee for the cost of preparation and distribution. The power of attorney for health care instrument distributed by the department shall include the notice specified in sub. (1) and shall be in the following form:

POWER OF ATTORNEY FOR HEALTH CARE

Document made this.... day of.... (month),.... (year).

CREATION OF POWER OF ATTORNEY

FOR HEALTH CARE

I,.... (print name, address and date of birth), being of sound mind, intend by this document to create a power of attorney for health care. My executing this power of

BILL**SECTION 56**

1 attorney for health care is voluntary. Despite the creation of this power of attorney
2 for health care, I expect to be fully informed about and allowed to participate in any
3 health care decision for me, to the extent that I am able. For the purposes of this
4 document, "health care decision" means an informed decision to accept, maintain,
5 discontinue or refuse any care, treatment, service or procedure to maintain, diagnose
6 or treat my physical or mental condition.

7 In addition, I may, by this document, specify my wishes with respect to making
8 an anatomical gift upon my death.

DESIGNATION OF HEALTH CARE AGENT

9
10 If I am no longer able to make health care decisions for myself, due to my
11 incapacity, I hereby designate.... (print name, address and telephone number) to be
12 my health care agent for the purpose of making health care decisions on my behalf.
13 If he or she is ever unable or unwilling to do so, I hereby designate.... (print name,
14 address and telephone number) to be my alternate health care agent for the purpose
15 of making health care decisions on my behalf. Neither my health care agent nor my
16 alternate health care agent whom I have designated is my health care provider, an
17 employee of my health care provider, an employee of a health care facility in which
18 I am a patient or a spouse of any of those persons, unless he or she is also my relative.
19 For purposes of this document, "incapacity" exists if 2 physicians or a physician and
20 a psychologist who have personally examined me sign a statement that specifically
21 expresses their opinion that I have a condition that means that I am unable to receive
22 and evaluate information effectively or to communicate decisions to such an extent
23 that I lack the capacity to manage my health care decisions. A copy of that statement
24 must be attached to this document.

GENERAL STATEMENT OF AUTHORITY GRANTED

BILL

1 Unless I have specified otherwise in this document, if I ever have incapacity I
2 instruct my health care provider to obtain the health care decision of my health care
3 agent, if I need treatment, for all of my health care and treatment. I have discussed
4 my desires thoroughly with my health care agent and believe that he or she
5 understands my philosophy regarding the health care decisions I would make if I
6 were able. I desire that my wishes be carried out through the authority given to my
7 health care agent under this document.

8 If I am unable, due to my incapacity, to make a health care decision, my health
9 care agent is instructed to make the health care decision for me, but my health care
10 agent should try to discuss with me any specific proposed health care if I am able to
11 communicate in any manner, including by blinking my eyes. If this communication
12 cannot be made, my health care agent shall base his or her decision on any health
13 care choices that I have expressed prior to the time of the decision. If I have not
14 expressed a health care choice about the health care in question and communication
15 cannot be made, my health care agent shall base his or her health care decision on
16 what he or she believes to be in my best interest.

LIMITATIONS ON MENTAL HEALTH TREATMENT

17
18 My health care agent may not admit or commit me on an inpatient basis to an
19 institution for mental diseases, an intermediate care facility for persons with ~~mental~~
20 ~~retardation~~ an intellectual disability, a state treatment facility or a treatment
21 facility. My health care agent may not consent to experimental mental health
22 research or psychosurgery, electroconvulsive treatment or drastic mental health
23 treatment procedures for me.

**ADMISSION TO NURSING HOMES OR
COMMUNITY-BASED RESIDENTIAL FACILITIES**

BILL**SECTION 56**

1 My health care agent may admit me to a nursing home or community-based
2 residential facility for short-term stays for recuperative care or respite care.

3 If I have checked "Yes" to the following, my health care agent may admit me for
4 a purpose other than recuperative care or respite care, but if I have checked "No" to
5 the following, my health care agent may not so admit me:

6 1. A nursing home — Yes.... No....

7 2. A community-based residential facility — Yes.... No....

8 If I have not checked either "Yes" or "No" immediately above, my health care
9 agent may admit me only for short-term stays for recuperative care or respite care.

10 **PROVISION OF A FEEDING TUBE**

11 If I have checked "Yes" to the following, my health care agent may have a
12 feeding tube withheld or withdrawn from me, unless my physician has advised that,
13 in his or her professional judgment, this will cause me pain or will reduce my comfort.
14 If I have checked "No" to the following, my health care agent may not have a feeding
15 tube withheld or withdrawn from me.

16 My health care agent may not have orally ingested nutrition or hydration
17 withheld or withdrawn from me unless provision of the nutrition or hydration is
18 medically contraindicated.

19 Withhold or withdraw a feeding tube — Yes.... No....

20 If I have not checked either "Yes" or "No" immediately above, my health care
21 agent may not have a feeding tube withdrawn from me.

22 **HEALTH CARE DECISIONS FOR**
23 **PREGNANT WOMEN**

24 If I have checked "Yes" to the following, my health care agent may make health
25 care decisions for me even if my agent knows I am pregnant. If I have checked "No"

BILL

1 to the following, my health care agent may not make health care decisions for me if
2 my health care agent knows I am pregnant.

3 Health care decision if I am pregnant — Yes.... No....

4 If I have not checked either “Yes” or “No” immediately above, my health care
5 agent may not make health care decisions for me if my health care agent knows I am
6 pregnant.

7 STATEMENT OF DESIRES,

8 SPECIAL PROVISIONS OR LIMITATIONS

9 In exercising authority under this document, my health care agent shall act
10 consistently with my following stated desires, if any, and is subject to any special
11 provisions or limitations that I specify. The following are specific desires, provisions
12 or limitations that I wish to state (add more items if needed):

13 1) -

14 2) -

15 3) -

16 INSPECTION AND DISCLOSURE OF
17 INFORMATION RELATING TO MY PHYSICAL
18 OR MENTAL HEALTH

19 Subject to any limitations in this document, my health care agent has the
20 authority to do all of the following:

21 (a) Request, review and receive any information, oral or written, regarding my
22 physical or mental health, including medical and hospital records.

23 (b) Execute on my behalf any documents that may be required in order to obtain
24 this information.

25 (c) Consent to the disclosure of this information.

BILL**SECTION 56**

(The principal and the witnesses all must sign the document at the same time.)

SIGNATURE OF PRINCIPAL

(person creating the power of attorney for health care)

Signature.... Date....

(The signing of this document by the principal revokes all previous powers of attorney for health care documents.)

STATEMENT OF WITNESSES

I know the principal personally and I believe him or her to be of sound mind and at least 18 years of age. I believe that his or her execution of this power of attorney for health care is voluntary. I am at least 18 years of age, am not related to the principal by blood, marriage, or adoption, am not the domestic partner under ch. 770 of the principal, and am not directly financially responsible for the principal's health care. I am not a health care provider who is serving the principal at this time, an employee of the health care provider, other than a chaplain or a social worker, or an employee, other than a chaplain or a social worker, of an inpatient health care facility in which the declarant is a patient. I am not the principal's health care agent. To the best of my knowledge, I am not entitled to and do not have a claim on the principal's estate.

Witness No. 1:

(print) Name.... Date....

Address....

Signature....

Witness No. 2:

(print) Name.... Date....

Address....

BILL

1 Signature....

2 STATEMENT OF HEALTH CARE AGENT AND
3 ALTERNATE HEALTH CARE AGENT

4 I understand that.... (name of principal) has designated me to be his or her
5 health care agent or alternate health care agent if he or she is ever found to have
6 incapacity and unable to make health care decisions himself or herself. (name of
7 principal) has discussed his or her desires regarding health care decisions with me.

8 Agent's signature....

9 Address....

10 Alternate's signature....

11 Address....

12 Failure to execute a power of attorney for health care document under chapter
13 155 of the Wisconsin Statutes creates no presumption about the intent of any
14 individual with regard to his or her health care decisions.

15 This power of attorney for health care is executed as provided in chapter 155
16 of the Wisconsin Statutes.

17 ANATOMICAL GIFTS (optional)

18 Upon my death:

19 I wish to donate only the following organs or parts: (specify the organs or
20 parts).

21 I wish to donate any needed organ or part.

22 I wish to donate my body for anatomical study if needed.

23 I refuse to make an anatomical gift. (If this revokes a prior commitment that
24 I have made to make an anatomical gift to a designated donee, I will attempt to notify
25 the donee to which or to whom I agreed to donate.)

BILL**SECTION 56**

1 Failing to check any of the lines immediately above creates no presumption
2 about my desire to make or refuse to make an anatomical gift.

3 Signature.... Date....

4 **SECTION 57.** 632.88 (1) (a) of the statutes is amended to read:

5 632.88 (1) (a) Incapable of self-sustaining employment because of ~~mental~~
6 ~~retardation~~ intellectual disability or physical handicap; and

7 (END)